In the Matter of License No. 233987 and Merchant Mariner's Document No.
Issued to: ALBERT KEERSON

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1259

ALBERT KEERSON

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 9 November 1959, an Examiner of the United States Coast Guard at New York, New York suspended Appellant's seaman documents upon finding him guilty of negligence. The two specifications found proved allege that while serving as Master on board the United States SS ANNE QUINN under authority of the license above described, on or about 24 March 1959, Appellant contributed to a collision between his vessel and the Swedish motor vessel FLAMINGO by navigating the ANNE QUINN at an immoderate speed under conditions of fog and restricted visibility; and by failing to stop the engines of the ANNE QUINN upon hearing the fog signal of a vessel forward of the beam of the ANNE QUINN, the position of the other vessel not having been ascertained.

At the hearing, Appellant was represented by counsel of his own choice. Appellant entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence the testimony of the Second Mate, Second Assistant Engineer, two lookouts and the helmsman at the time of collision. The testimony of the latter three was taken by oral deposition. Numerous documentary exhibits were introduced by both parties.

Appellant testified in his defense. He stated that he was on the bridge at all critical times while navigating the ship in patchy fog; he first became aware of the fog signal of another vessel when he heard it abeam to port at 1416 and reduced speed to one-half ahead or 3 knots over the ground; the engines were stopped a minute later when Appellant heard the fog signal a second time; the engines were going astern one minute before the collision and about half a minute before Appellant saw the Flamingo 3 to 4 points on the port bow; the QUINN was stopped when she was struck by the other vessel.

At the end of the hearing, the Examiner rendered the decision in which he concluded that the charge and two specifications had been proved. The Examiner then entered an order suspending all

documents, issued to Appellant, for a period of three months outright plus three months on twelve months' probation.

FINDINGS OF FACT

On a voyage including 24 March 1959, Appellant was serving as Master on board the United States SS ANNE QUINN and acting under authority of his license when his ship collided with the Swedish motor vessel FLAMINGO in the North Sea off the coast of Netherlands. The collision occurred at 1419 in dense fog which limited visibility to not more than 750 feet. The bow of the QUINN penetrated the starboard side of the FLAMINGO aft of the anchor. There were no personnel injuries or lives lost. The casualty was not caused by any material failure. Damage to the QUINN amounted to approximately $20,000.

The ANNE QUINN is a Liberty-type vessel, 418 feet in length and 7255 gross tons. She was navigating on easterly courses in the North Sea en route from Houston, Texas to Hamburg, Germany with a full cargo of wheat. Her maximum speed when loaded is 10 knots at 60 RPM (R.67, 142). The ship was not equipped with radar.

There is no evidence in the record concerning the characteristics or navigation of the FLAMINGO. There were indications that she was equipped with radar and not loaded. The FLAMINGO was first sighted while on a port to starboard crossing relative to the bow of the QUINN.

Due to dense fog, the QUINN anchored off the coast of Netherlands on the night of 23-24 March. She got under way on course 065 degrees true and gyro at 1003 on 24 March.

The Second Mate had the 1200 to 1600 watch. Throughout his watch until the time of collision, the ship was proceeding in dense, and at times, patchy fog. Fog signals were sounded by the QUINN at intervals of one minute or less. Lookouts were posted on the bow and on the flying bridge. Appellant was on the bridge at all times after 1200. He was either in the pilothouse on a wing of the bridge between 1412 and 1419. The wind was easterly, force 3 (7 to 10 knots) and the ship was running against a 2-knot current.

At 1300, speed was increased to full ahead and standby was rung up on the telegraph. The ship averaged 52 RPMs from this time until speed was reduced. This resulted in full ahead speed of more than 8 knots through the water (R.152). At 1400, able seaman Chester relieved the helmsman and obeyed Appellant's order to change course to 075 degrees true. At 1412, Borkumriff Light Vessel was passed abeam to starboard at a distance of one mile. This Light Vessel has a very distinct fog signal which could not be mistaken for a fog signal from another vessel (R. 183-4). Course was changed to 085 true at this time.

At 1414, the Second Mate heard a ship's fog signal which seemed to come from off the starboard bow and reported this to Appellant. He too no action to alter speed. Shortly thereafter,

the Second Mate reported hearing a fog signal on the starboard bow and told Appellant that it was "pretty [or very] close" (R.12,58; Chester pp. 13,17). The two lookouts also reported hearing fog signals either off the starboard or port bow. At 1416, Appellant heard a fog signal to port. He ordered half speed ahead and hard right rudder. At 1417, Appellant gave an order to stop the engines. The Second Mate was operating the telegraph in the wheelhouse and he relayed the order to the engine room. The helmsman complained that he was having difficulty steering the ship (R. 170). At 1419, Appellant ordered full astern less than half a minute before the FLAMINGO came into sight on the port bow. Some 30 seconds after the other ship could be seen, the collision occurred (R. 33, 160). The QUINN was still making headway through the water when her bow struck the starboard side of the FLAMINGO. Appellant ordered the engines stopped at the time of impact.

As the QUINN continued to move ahead, the FLAMINGO came down the port side of the QUINN and damaged the port wing of her bridge. At 1420, Appellant ordered full ahead and left full rudder in an attempt to swing the stern of the QUINN away from the FLAMINGO. At 1420 1/2, the engines were stopped and ordered full astern at 1424. Engines were stopped at 1426 when the QUINN anchored with the Light Vessel bearing 201 degrees at a distance of one mile. The ship was then about 7/10 of a mile east of her position abeam of the Light Vessel. The QUINN got under was at 1616 and proceeded to Hamburg.

Appellant has no prior record of negligence or misconduct.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that:

Point I. The decision of the Examiner is not based on all the evidence. The Examiner ignored the testimony of the Second Assistant Engineer who testified that the QUINN was not making full speed of 10 knots (60 RPM) and that she was going astern at the time of collision.

Point II. The Examiner erred in accepting the testimony of the Second Mate that the speed of the QUINN was 8 knots at the time of impact rather than finding that she was making sternway as is indicated by the speed changes ordered and the short distance the QUINN anchored from her position abeam the Light Vessel at 1412. (Computations based on the engine room logbook show that the ship's speed over the ground was 5.53 knots at 1416 allowing of an 8% positive engine slip and a two-knot current.) The Second Mate's testimony is also incredible because of other inconsistencies including the statement that he heard the FLAMINGO's fog signal on the starboard bow when she was off the port bow; and his testimony, contrary to Appellant's and the helmsman's, that the pilothouse windows were open.

Point III. The witnesses against Appellant were prejudiced. The Second Mate indicated this attitude by refusing to give Appellant a statement concerning the collision. Appellant had discharged the Second Mate from another ship for neglect of duty. The two lookouts were logged one day's pay each for inability to perform their duties in Hamburg.

In conclusion, it is respectfully submitted that the decision of the Examiner should be reversed. The report of damage to the QUINN shows that she was struck by the FLAMINGO; Appellant was concerned about the possibility of drifting down on the Borkumriff Light Vessel if he stopped the engines at 1416.

APPEARANCE on appeal: Harold, Luca, Persky and Mozer of New York City by Robert J. Mozer, Esquire, of Counsel.

OPINION

It is my opinion that the evidence in the record clearly supports the allegations contained in the two specifications and that the order imposed by the Examiner is justified by these offenses. The specifications are based on the wording in Rule 16 of the International Rules of the Road (33U.S.C.145n) which is strictly enforced by the courts. This rule requires a vessel to go at a moderate speed in fog (first specification) and to stop her engines upon hearing, apparently forward of the beam, the fog signal of a vessel the position of which is not ascertained (second specification).

The Examiner's findings have been modified to agree with some of the points raised on appeal. The above findings of fact state that, between 1412 and the collision, Appellant was in the pilothouse or on a bridge wing and not in his officer at 1414; the range of visibility was not more than 750 feet rather than limited to 250 feet; the collision was a minute later than 1418. The reasons for these changes follow.

The Master testified that he remained on the bridge between 1412 and the collision. The helmsman, Chester, stated that he did not notice the Master leave the vicinity of the pilothouse (deposition p. 31). Contrary to the testimony of the Second Mate, the Master testified that he had eaten before this time.

Although Appellant and the Second Assistant testified that the maximum speed through the water under favorable conditions while loaded was 10 knots at 60 RPM (R. 67, 142), appellant also stated that the propeller averaged 52 RPM after full ahead was ordered at 1300. This is corroborated to some extent by the engine room logbook and the computations submitted on appeal. But the testimony of these two witnesses also implies that the 10 knot speed referred to includes an allowance for engine slip. Hence, before the speed was reduced to one-half ahead at 1416, the theoretical speed through the water was 8.66 knots except for a slight reduction caused by the 7 to 10 knot easterly wind.

Appellant estimated that he sighted the FLAMINGO at a distance of up to half a mile (R.196) in a patchy fog (R.157). But he also testified, in agreement with the Second Mate, that the other ship was seen only about one-half minute before the collision (R.33,0160). The testimony of the other witnesses was that the fog was dense and only one of them agreed with Appellant that it was patchy. This was the flying bridge lookout who stated that he saw the ship at a distance of 1 to 2 ship lengths (Marshall p. 5). The bow lookout indicated that the FLAMINGO was very close when seen; the

Second Mate said it was about 250 feet (R. 57); and the helmsman estimated the visibility at 150 feet (Chester p. 4). Considering all the evidence on this point and the fact that observation of the FLAMINGO at 750 feet and one-half minute before the collision would mean that the closing rate of speed was 15 knots, it is my opinion that the distance of visibility was not more than 750 feet.

Considering the testimony that the engines had been going aster about a minute and were stopped immediately after the collision, the entries in the engine room bell book seem more convincing than those in the bridge bell book. The former indicates that "full astern" was ordered at 1419 and "stop" at 1419 1/2. The bridge bell has "full astern" at 1418 and "stop" at 1420. Hence, I agree with Appellant that the evidence indicates the collision occurred at 1419.

FIRST SPECIFICATION

The issue of immoderate speed is often determined on the basis of whether or not the ship is able to stop dead in the water within one-half the distance of visibility or before colliding with another vessel. Commandant's Appeal Decision No. 955 and cases cited therein. It is clear that this element is to be judged with reference to speed through the water and not over the ground. Anglo-Saxon Petroleum Co. v. United States (C.A.2, 1955), 224 F 2d 86; Commandant's Appeal Decision Nos. 955, 989 and cases cited. Hence, the relevant speed of the QUINN was at least 8 knots until 1416 or 3 minutes before the accident. The adverse effect of the current which decreased the speed over the ground is not relevant. Although the engine speed was one-half ahead for 1 minute and the engines were stopped for 2 minutes after 1416, the testimony of all the witnesses, except Appellant and the Second Assistant Engineer, was that the QUINN was not stopped at the time of the collision. Three of them testified that the QUINN struck the FLAMINGO and the other witness simply states "they hit." The Second Assistant testified that he had no personal knowledge as to the time of the collision.

The Examiner rejected Appellant's testimony that the QUINN's speed through the water was stopped prior to contact and that his ship was struck by the FLAMINGO. I agree with the Examiner and do not consider it necessary to attempt to determine the speed of the Quinn when she hit the FLAMINGO. The report of damage to the QUINN, submitted on appeal, does not persuade me to reach a different conclusion. It is my opinion that in visibility limited to 750 feet the speed of 8 knots was excessive and that the QUINN's speed continued to be immoderate up to the time of collision since she could not do her part to avoid the collision by stopping dead in the water even though the engines were ordered full astern before the FLAMINGO was sighted.

The fact that the QUINN anchored at 1426 only 7/10 of a mile beyond her position abeam the Light Vessel at 1412 does not convince me that the above conclusion is wrong. An average speed of 8 knots through the water (6 knots over the ground with a 2-knot adverse current) between 1412 and 1419 would have carried the ship to this anchorage location. Upon anchoring, the QUINN probably was not located farther east than the point of collision because the engines were going astern or stopped except for the half a minute when they were going ahead against the current.

SECOND SPECIFICATION

It has been stated repeatedly that the command to stop the vessel's engines is imperative when the condition described in the above referred to Rule 16 confront the navigator. See Commandant's Appeal Decision No. 1078 and numerous authorities acted therein.

Appellant testified that no fog signal were reported to him prior to when he heard a fog signal "abeam" to port at 1416; and that he did not stop the engines then because he was afraid of drifting down on the Borkumriff Light Vessel. The latter factor would not justify Appellant's failure to stop the engines if fog signals "apparently forward of her beam" were reported to him. The inability to maintain steerageway is not an adequate excuse for failing to stop the engines. Anglo-Saxon Petroleum Co. v. United States, supra, Commandant's Appeal Decision No. 898. Furthermore, there was no immediate danger of running into the Light Vessel approximately a mile away.

Against the testimony of Appellant is that of the two lookouts and the Second Mate that fog signals of another vessel, or other vessels, than the Light Vessel were reported having been heard off the starboard or port bow prior to 1416. The helmsman corroborated the Second Mate's testimony that he told Appellant a fog signal on the starboard bow was "pretty close" or "very close" (R. 12, 58; Chester pp. 13, 17). The evidence indicates that this signal and others reported by the lookouts were being sounded by the FLAMINGO ,although she was off the port bow of the QUINN. Appellant pointed out that the wind distorted the direction from which a fog signal appeared to be coming (R. 158). He also made is clear that the signal from the Light Vessel could no be mistaken for the fog signal of a ship under way (R. 183-4).

For these reasons, it is my opinion that Appellant was required to have stopped the engines immediately after receiving the first report from the Second Mate at 1414.

In view of the strong corroboration of the Second Mate's testimony on several important issued, I am not inclined to reject his entire testimony because some of it is inconsistent with matters well supported by other evidence in the record. The claims of prejudiced testimony by the Second Mate and other witnesses is not supported by sufficient evidence in the record to reject the Examiner's findings as to the credibility of the witnesses. This evidence was available to the Examiner in his evaluation of the testimony.

CONCLUSION

Appellant is guilty as alleged. His testimony is unrealistic to some extent in the face of the testimony of the other witnesses and information obtained from the logbooks. The QUINN was proceeding at a speed in dense fog which prevented Appellant from seeing the FLAMINGO in time to stop and avoid colliding with her. It is concluded that the immoderate speed of the QUINN and the failure of Appellant to stop her engines when required to do so contributed to the collision with the FLAMINGO.

ORDER

The order of the Examiner dated at New York, New York, on 9 November 1959, is AFFIRMED.

A. C. Richmond
Admiral, United States Coast Guard
Commandant

Signed at Washington, D. C., this 22nd day of August 1961.